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Presentment Date: April 14, 2011
Time: 12:00 p.m.

Objections Due: April 14, 2011
Time: 11:00 a.m.

*Attorneys for Irving H. Picard, Esq., Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
And Bernard L. Madoff*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**TRUSTEE'S MOTION FOR AN ORDER APPROVING
THE RETENTION OF OSBORNE & OSBORNE, P.A. AS SPECIAL COUNSEL
NUNC PRO TUNC AS OF MARCH 8, 2011**

Irving H. Picard, Esq. ("Trustee"), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS"), under the Securities

Investor Protection Act, 15 U.S.C. §§ 78aaa, et seq. (“SIPA”),¹ and Bernard L. Madoff (together, the “Debtors”), by and through his undersigned counsel, for his motion (the “Motion”) for authority to retain Osborne & Osborne, P.A. (the “Osborne Firm”) as special counsel *nunc pro tunc* as of March 8, 2011, respectfully represents as follows:

Jurisdiction

1. This Court has jurisdiction over this Motion pursuant to SIPA section 78eee(b) and 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this SIPA liquidation case and this Motion are proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are section 78eee(b)(3) of SIPA and sections 327(e), 328, 329 and 330 of the Bankruptcy Code and Fed. R. Bankr. P. 2014.

Background

3. On December 11, 2008 (the “Filing Date”),² the Securities and Exchange Commission (“SEC”) filed a complaint in the United States District Court for the Southern District of New York against defendants Bernard L. Madoff and BLMIS (together, the “Defendants”) (No. 08 CV 10791). The complaint alleged that the Defendants engaged in fraud through investment advisor activities of BLMIS.

4. On December 12, 2008, the Honorable Louis L. Stanton of the United States District Court for the Southern District of New York entered an order which appointed Lee S. Richards, Esq., as receiver (the “Receiver”).

5. On December 15, 2008, Judge Stanton entered an order pursuant to SIPA (the “Protective Decree”), which, in pertinent part:

¹ For convenience, future reference to SIPA will not include “15 U.S.C.”

² See section 78III(7)(B) of SIPA.

- a) appointed the Trustee for the liquidation of the business of BLMIS pursuant to section 78eee(b)(3) of SIPA;
- b) appointed Baker & Hostetler LLP (“Baker Hostetler”) as counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA; and
- c) removed the case to this Bankruptcy Court pursuant to section 78eee(b)(4) of SIPA.

6. By Order dated July 16, 2009, this Court authorized the retention of Windels Marx Lane & Mittendorf, LLP (“Windels Marx”) as special counsel to the Trustee. Among other roles, Windels Marx has acted as counsel to the Trustee in situations where Baker Hostetler had a conflict.

7. By Order dated December 21, 2010, this Court authorized the retention of Young Conaway Stargatt & Taylor, LLP (“Young Conaway”) as special counsel to the Trustee. Among other roles, Young Conaway has acted as counsel to the Trustee in situations where Baker Hostetler and Windels Marx have had conflicts.

8. Young Conaway is currently representing the Trustee in connection with the adversary proceedings captioned *Picard v. The Melvin N. Lock Trust, et al.*, Adv. Pro. No. 10-05410 (BRL), (the “Lock Adversary Proceeding”) and *Picard v. Melvin B. Nessel 2006 U/A/D 3/14/06, et al.*, Adv. Pro No. 10-04351 (BRL) (the “Nessel Adversary Proceeding” and collectively with the Lock Adversary Proceeding, the “Adversary Proceedings”) in this Court.

9. In connection with the Lock Adversary Proceeding, the Trustee requires Florida counsel to appear in a certain probate proceeding filed by the Estate of Sylvia W. Lock and which is being administered in the Circuit Court for Palm Beach County, Florida Probate Division. Additionally, in connection with the Nessel Adversary Proceeding, the Trustee requires Florida probate counsel to address various issues of Florida probate law.

Relief Requested

10. The Trustee has determined that it is necessary to engage special counsel to represent him in connection with the Adversary Proceedings. The retention of such legal counsel will enable the Trustee to carry out his duties in this SIPA liquidation proceeding. The Trustee, therefore, proposes to retain and employ the Osborne Firm as its special counsel with regard to the Adversary Proceedings, and any similar matters as directed by the Trustee, effective as of March 8, 2011.

11. The Trustee seeks to retain the Osborne Firm as special counsel because of its extensive experience in Florida probate and trusts matters.

12. The services of the Osborne Firm are necessary and essential to enable the Trustee to execute faithfully his duties herein.

13. The Osborne Firm has indicated a willingness to act on the Trustee's behalf to render the foregoing professional services.

14. The Trustee submits that the Osborne Firm's provision of professional services to the Trustee is permissible under section 78eee(b)(3) of SIPA and is in the best interest of the Debtors' estates and customers and creditors.

15. To the best of the Trustee's knowledge, and as set out on the affidavit of R. Brady Osborne, Jr., attached hereto as Exhibit A, the Osborne Firm is disinterested pursuant to section 78eee(b)(6)(A) of SIPA and do not hold or represent any interest adverse to the Debtors' estate in respect of the matter for which the Osborne Firm is to be retained.

16. The Osborne Firm will be compensated at agreed upon rates, listed below, which reflect a reduction of its normal rates by ten percent (10%). Applications for compensation to the Osborne Firm will be filed with this Court pursuant to applicable provisions of SIPA,

including review and recommendation of SIPC pursuant to section 78eee(b)(5)(C) of SIPA. The Osborne Firm's rate information is as follows:

Level of Experience	Hourly Rates (after 10% discount) ³
Partners	\$337.50
Associates	\$265.50
Paralegals	\$112.50

17. SIPC has no objection to this Motion and, pursuant to SIPA section 78eee(b)(3), SIPC concurs that the Trustee should be authorized to retain the Osborne Firm as special counsel for the purposes identified herein, subject to the approval of this Court.

Notice

18. Notice of this Motion has been given to SIPC, the SEC, the Internal Revenue Service, the United States Attorney for the Southern District of New York, and, by way of the ECF filing that will be made, all parties that have filed a notice of appearance herein. In light of the nature of the relief requested, the Trustee submits that such notice is good and sufficient, and no other or further notice is necessary or required.

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These rates will be maintained for one year from the date of the Osborne Firm's engagement.

WHEREFORE, the Trustee respectfully requests that the Court enter an order substantially in the form of Exhibit B hereto, (a) granting this Motion; (b) authorizing the Trustee to employ the Osborne Firm as special counsel for the purposes described herein, *nunc pro tunc*, as of March 8, 2011; and (c) granting the Trustee such other and further relief as is just and proper.

Date: April 6, 2011
New York, New York

Of Counsel:

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